IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

FRIDAY, THE 7TH SEPTEMBER 2007 / 16TH BHADRA 1929

Crl.Rev.Pet.No. 3023 of 2007()

CRA.671/2006 of ADDL.SESSIONS COURT (ADHOC), KOTTAYAM
CC.580/2003 of JUDL.MAGISTRATE OF FIRST CLASS, ETTUMANUR

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REVN. PETITIONER: APPELLANT/ACCUSED

PRINCE, S/O. C.K.BAHULEYAN,
CHENNAMKERIL HOUSE, PULIKKUTTUSSERI,
AYMANAM KARA, AYMANAM VILLAGE.

BY ADV. SRI.SURIN GEORGE IPE

RESPONDENTS: RESPONDENT

STATE OF KERALA, REP. BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S.SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 07/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR, J.

Crl. R.P. No. 3023 OF 2007 C

Dated this the 7th day of September, 2007

O R D E R

The revision petitioner, who was the driver of a stage carriage bus, was prosecuted by the Sub Inspector of Police, Gandhi Nagar in Crime No.240/03 before the JFCM, Ettumanoor for offences punishable under sections 279 and 304A IPC.

2. The case of the prosecution can be summarized as follows:-

On 5.7.03 at 8.15 a.m. the accused drove a stage carriage bus named 'Thushara' in a rash and negligent manner so as to endanger human life through the Surya junction from north to south along Karippoothattu public road. When the bus reached Maniaparambu bhagom, the right rear side of the bus knocked down 13 years old Jobin who was a school boy riding on his bicycle. The boy sustained grievous head injuries and injuries to the ribs and chest and succumbed to the same within 15 minutes. The accused has

thereby committed the aforementioned offences.

3. On the side of the prosecution, 15 witnesses were examined as PWs 1 to 15 of whom PWs 5, 6 and 7 are the eye witnesses to the occurrence. PWs 5 and 6 were pedestrians whereas PW7 was a passenger in the bus. The prosecution got marked 10 documents as Exts.P1 to P10.

4. After the close of the prosecution, the accused were questioned under section 313(1)(b) Cr.P.C. with regard to the incriminating circumstances appearing against him in the evidence for the prosecution. He denied those circumstances and maintained his innocence. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate after trial, as per judgment dated 3.10.06 found the revision petitioner guilty of the offences and sentenced him to undergo simple imprisonment for one month under section 279 IPC and simple imprisonment for three months under section 304A IPC. An appeal preferred by the revision petitioner as Criminal Appeal No.671/06 before the Additional Sessions Court, Kottayam

was unsuccessful. Hence this revision.

6. Eventhough the learned counsel appearing for the revision petitioner assailed the conviction recorded concurrently by the courts below, in as much as the conviction has been entered after a careful evaluation of the oral and documentary evidence of the case, sitting in the rarefied revisional jurisdiction, I am not inclined to interfere with the same. The conviction is accordingly confirmed.

7. What now survives for consideration is the question regarding the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that the 13 years old school boy who was riding on his bicycle was knocked down by the stage carriage bus driven by the revision petitioner by the right rear side of the bus hitting against the cyclist. But the evidence on record will show the following:-

The road is running north to south with its tarred portion having a width of 4 metres. The exact scene of occurrence is 40 c.m. to the east of the western tarred edge of the road. The bus driven by the revision petitioner was proceeding from

north to south and the point of contact of the bus is the right rear side. The deceased school boy was also proceeding in the same direction. This means that both the cyclist as well as the bus were on the wrong side of the road and the cyclist who was on the extreme wrong side of the road. The bus presumably drove past the cyclist who was on the right side of the bus. At that time the right rear portion of the bus might have dashed against the cyclist resulting in the occurrence. The revision petitioner is only a driver by avocation. Taking this into account, I do not think that the revision petitioner deserves penal servitude by way of incarceration for the conviction recorded against him and that interests of justice will be adequately met by putting the revision petitioner on a lesser sentence. Accordingly, the sentence imposed on the revision petitioner is set aside and for his conviction under section 279 IPC, he is sentenced to a fine of Rs.3,000/- (Rupees three thousand only) and on default to pay the fine, he shall suffer simple imprisonment for one month. For the conviction under section 304 A IPC, the revision petitioner is

directed to suffer imprisonment till the rising of the court and to pay a compensation of Rs.7,500/- (Rupees seven thousand and five hundred only) under section 357(3) Cr.P.C. to the legal heirs of the deceased boy. From out of the fine amount, a sum of Rs.2,000/- (Rupees two thousand only) shall be paid to the legal heirs of the deceased boy. The fine as well as the compensation shall be deposited within 60 days from today.

This revision is disposed of confirming the conviction but modifying the sentence as above.

(V. RAMKUMAR, JUDGE)

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